

Message Text

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ACTION ARA-20

INFO OCT-01 ISO-00 SEC-03 SS-20 SPC-03 NSC-10 CIAE-00

INR-10 NSAE-00 PA-04 RSC-01 USIA-15 PRS-01 L-03 SCA-01

JUSE-00 DRC-01 /093 W

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P R 231636Z NOV 73

FM AMEMBASSY NASSAU

TO SECSTATE WASHDC PRIORITY 4925

INFO AMEMBASSY SAN JOSE

C O N F I D E N T I A L SECSTION 1 OF 2 NASSAU 1791

E. O. 11652: GDS

TAGS: PFOR CPRS BF

SUBJ: EXTRADITION - ROBERT L. VESCO : HEARING DAY SEVEN

BEGIN SUMMARY: IN A LONG DAY OF SEESAWING PROCEDURAL RULINGS AND SOME PROVOCATIVE STATEMENTS, LOWE COMPLETED HIS TESTIMONY AND ADDITIONAL USG AFFIDAVITS, WHILE APPARENTLY BARRED BY MAGISTRATE'S RULING, WERE FINALLY ADMITTED IN EVIDENCE. END SUMMARY.

1. MORNING SESSION NOV 21 BEGAN WITH MAGISTRATE OSADEBAY'S RULING ON THE QUESTION OF WHETHER USG COULD CROSS-EXAMINE OR MERELY REEXAMINE ASST US ATTORNEY LOWE. MAGISTRATE RULED THAT LOWE WAS WITNESS CALLED FOR USG SIDE AND THEREFORE ONLY SUBJECT TO REDIRECT BY WHITFIELD AND TOOTHE. RULING APPEARED TO MAKE LITTLE PRACTICAL DIFFERENCE. IN RESPONSE TO TOOTHE'S QUESTIONS, LOWE AFFIRMED THAT 18 USC 1343 DID NOT DISTINGUISH BETWEEN COMPLETED AND ATTEMPTED FRAUD, EXPLAINED HOW USDC JURISDICTION AND VENUE APPLIED TO FACTS IN THIS CASE, SAID THAT US OF WIRE WAS ONE OF A SERIES OF OVERT ACTS IMPLEMENTING THE ALLEGED FRAUDULENT SCHEME, AND EXPLAINED THAT SECTIONS 1343 AND 2 WERE NOT SEPARATE COUNTS IN THE INDICTMENT SINCE THE AIDING AND ABETTING PRINCIPLES OF SECTION 2 WERE IMPLICITLY CONTAINED IN SUBSTANTIVE COUNT. VESCO ATTORNEY DUPUCH HAD NO FURTHER QUESTIONS AND LOWE STEPPED DOWN WITH THE

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THANKS OF MAGISTRATE.

2. TOOTHE TENDERED NEW AFFIDAVITS, BEGINNING WITH THAT OF TAYLOR ON CERTAIN PROVISIONS OF USC. OSADEBAY BROUGHT HIM UP SHORT BY REPEATING HIS EARLIER ARGUMENT THAT USG HAD ALREADY CLOSED ITS CASE BY TENDERING BATCH OF DOCUMENTS AT OUTSET WHICH IT CALLED "ITS CASE". MAGISTRATE SAID HE WOULD ACCEPT FURTHER DOCUMENTS AT THIS POINT ONLY AS MATTER OF HIS DISCRETION AND AFTER ARGUMENT BY COUNSEL. TOOTHE SAID THAT DOCUMENTS WERE TENDERED TOGETHER AT OUTSET ONLY BECAUSE THEY HAD BEEN COVERED BY ONE BLANKET CERTIFICATION, NOT BECAUSE THEY WERE INTENDED TO CONSTITUTE USG CASE IN ITS ENTIRETY. WHITFIELD INTERVENED AND MAGISTRATE SAID FORMER WAS ACCUSING HIM OF DEFENDING VESCO; WHITFIELD AND OSADEBAY ADMITTED PUBLICLY TO A "BARRIER OF COMMUNICATION" BETWEEN THEM, AND THERE WAS SOME DISCUSSION OF WHETHER THE MISUNDERSTANDINGS WHICH HAVE PERSISTENTLY CROPPED UP WERE INADVERTENT OR DELIBERATE. MAGISTRATE SAID HE WOULD RULE ON ADMISSIBILITY OF FURTHER AFFIDAVITS AFTER LUNCHEON RECESS.

3. OSADEBAY OPENED AFTERNOON SESSION BY RULING THAT, EVEN THOUGH IN HIS VIEW USG CASE HAD BEEN RESTED, HE WOULD IN HIS DISCRETION ADMIT AFFIDAVITS OF INDIVIDUALS WHO HAD NOT "TESTIFIED" EARLIER, BUT WOULD NOT ALLOW SUPPLEMENTARY AFFIDAVITS OF THOSE WHOSE AFFIDAVITS HAD ALREADY BEEN TENDERED. MAGISTRATE AND WHITFIELD IMMEDIATELY GOT INTO WRANGLE OVER RULING. OSADEBAY SAID THAT IF USG NOW FOUND THAT THE AFFIDAVITS IT ORIGINALLY TENDERED CONTAINED "LOOPHOLES" THAT WAS NOT HIS AFFAIR, AND THAT TO PERMIT IN EVIDENCE A SERIES OF SUPPLEMENTARY AFFIDAVITS PURPORTING TO CLOSE THOSE LOOPHOLES WOULD, AS GENERAL RULE, MAKE DEFENSE EFFORTS IMPOSSIBLE SINCE PROSECUTION WITNESSES WOULD BE TEMPTED TO PERJURE THEMSELVES TO PATCH UP HOLES OPENED BY DEFENSE DURING PRESENTATION OF ORIGINAL AFFIDAVITS (OSADEBAY HASTENED TO ASSURE SUDDENLY HUSHED COURTROOM THAT HIS LAST REMARK WAS ONLY GENERAL AND NOT INTENDED TO APPLY TO USG IN THIS CASE).

4. WHITFIELD THEN ASKED MAGISTRATE FOR IMMEDIATE ADJOURNMENT SO THAT WRIT OF MANDAMUS COULD BE SOUGHT IN GCOB SUPREME COURT TO TEST OSADEBAY'S RULING. MAGISTRATE SAID MANDAMUS MOVE WAS UP TO WHITFIELD, BUT HE WOULD NOT ADJOURN HEARING FOR IT, AND CONFIDENTIAL

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THAT IF USG REFUSED TO PROCEED WITH ITS CASE HE WOULD RELEASE VESCO FORTHWITH. A TEN-MINUTE COOLING-OFF RECESS WAS PERMITTED.

5. AFTER HEARING RECONVENED, WHITFIELD TENDERED AFFIDAVIT BY ICC COMPTROLLER OST, WHICH WAS ADMITTED. WHITFIELD THEN ENTERED A SECOND AFFIDAVIT BY OST, WHICH DUPUCH IMMEDIATELY CHALLENGED UNDER MAGISTRATE'S RULING. AT THIS POINT, WHIT-

FIELD CHANGED HIS TACK. THE SECOND OST AFFIDAVIT, HE ARGUED, DID NOT REFUTE OR CHANGE THE FIRST, IT MERELY CLARIFIED IT, AND WAS INTENDED NOT TO HURT VESCO'S CASE OR HELP THE USG'S, BUT MERELY TO ASSIST THE COURT IN NAILING DOWN AS MANY FACTS AS POSSIBLE. TO DUPUCH'S HORROR, OSADEBAY BOUGHT THIS ARGUMENT AND ACCEPTED THE SECOND AFFIDAVIT. APPARENTLY NOT WISHING TO LOSE MOMENTUM, WHITFIELD THEN TENDERED THE SECOND RICHARDSON AFFIDAVIT, WHICH HAD BEEN THE SUBJECT OF AN EARLIER SQUABBLE. THIS ONE TOO OSADEBAY ACCEPTED UNDER THE SAME ARGUMENT. DUPUCH OBJECTED STRONGLY, BUT AFTER SOME COACHING FROM VESCO HIMSELF, ACQUIESCED. COMMENT: IT DOES NOT APPEAR THAT ANYTHING PARTICULAR HAPPENED DURING THE TEN-MINUTE RECESS TO CHANGE OSADEBAY'S MIND, OTHER PERHAPS THAN THE REVERBERATIONS OF THE WORD "MANDAMUS" IN HIS EARS. WHILE IN THEORY HIS RULING WENT AGAINST THE USG SIDE, IN THE END HE ACCEPTED ALL THE USG EVIDENCE WHICH HAD FORMED ITS SUBJECT MATTER.

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JUSE-00 DRC-01 /093 W

----- 069149

P R 231636Z NOV 73

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C O N F I D E N T I A L SECTION 2 OF 2 NASSAU 1791

6. TOOTHE INDICATED HE MIGHT WISH AT THE NEXT SESSION TO INTRODUCE AN AFFIDAVIT TOUCHING ON THE 1972 PROTOCOL TO THE US-UK EXTRADITION TREATY. OSADEBAY INDICATED HE WOULD NOT BE RECEPTIVE TO SUCH AN AFFIDAVIT, SINCE HE ASSUMED IT WOULD RELATE TO MATTERS FALLING UNDER THE HEADING OF TRAVAUX PREPARATOIRES WHICH MAY NOT BE RESORTED TO UNLESS THE LANGUAGE OF THE PROTOCOL WAS AMBIGUOUS ON ITS FACE (WHICH, IN HIS VIEW, IT WAS NOT). HE ASSERTED THAT IT WAS HIS RIGHT AS A

JUDGE TO REACH HIS OWN CONCLUSIONS ABOUT THE MEANING AND EFFECT OF THE

PROTOCOL, EVEN IF THEY WENT COUNTER TO THE INTENTION OF THE PARTIES TO IT. AT ANY RATE, HE WOULD LEAVE THIS UNTIL TOMORROW.

7. COMMENT: VESCO SEEMS TO BE FOLLOWING COURTROOM EVENTS CLOSELY AND WITH GREAT INTEREST: VISIBLY PLEASED WHEN DUPUCH MAKES A POINT, SCOWLING AT THE SUCCESSES OF THE USG SIDE, EXAMINING DOCUMENTS TENDERED AND COACHING DUPUCH AGAIN AND AGAIN ON WHAT APPEAR TO BE BOTH FACTUAL AND LEGAL POINTS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, COURTS, POLITICAL TRIALS, FRAUDS, ATTORNEYS, AFFIDAVITS, CONSULAR LEGAL ASSISTANCE
Control Number: n/a
Copy: SINGLE
Draft Date: 23 NOV 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973NASSAU01791
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: n/a
From: NASSAU
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731116/aaaaalvc.tel
Line Count: 181
Locator: TEXT ON-LINE
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 16 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16-Jan-2002 by kelleyw0>; APPROVED <05-Feb-2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXTRADITION - ROBERT L. VESCO : HEARING DAY SEVEN BEGIN SUMMARY: IN A LONG DAY OF SEESAWING PROCEDURAL RULINGS
TAGS: PFOR, CPRS, BF, (VESCO, ROBERT L)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005